

Controlled Eavesdropping

When the President chose as chairman of his National Crime Commission an Attorney General who had already ardently advocated wiretapping by law-enforcement agencies, the Commission's stand on this controversial issue was pretty plainly foreshadowed. And, indeed, it is now disclosed that the Commission has tentatively decided to ask Congress to authorize both wiretapping and "bugging" by Federal agents under what it calls "strict safeguards" and with court approval.

The trouble with wiretapping and bugging under "strict safeguards" is simply that there are no safeguards that can have any efficacy short of absolute prohibition. And the trouble with court approval—which is really about the only safeguard proposed—is that it is a complete sham. The idea behind "court approval" is that a wiretap or a concealed microphone is analogous to a search which is made legal by a warrant obtained in advance from a judge. But a search warrant is required to specify the thing to be sought and the place to be searched; and it may not be conducted for the purpose of obtaining evidence but only for contraband and for the means by which a crime was committed.

A wiretap or a "bug" by its very nature cannot be confined in these ways. It is dragnet in character. It records everything said on a particular telephone or in a particular location, whether the words are spoken by someone under investigation or by someone altogether innocent of crime and whether the words are related to a crime or concern only wholly private affairs—business transactions, domestic relations, lovers' quarrels or political opinions. And the very purpose of a wiretap or "bug" is to obtain evidence for use in the prosecution of a suspect.

If it embraces electronic eavesdropping as a technique for investigating crime, the Crime Commission will make a decision of the deepest social consequence. For the sake of an aid to law enforcement, it will foster a mammoth invasion of privacy. Let the Commission weigh not alone the advantages to public safety but also the costs in terms of freedom of communication. Those costs are prohibitively high.